

Merit Systems Protection Board

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the Clerk of the Board in accordance with § 1201.154.

[54 FR 53504, Dec. 29, 1989, as amended at 56 FR 41748, Aug. 23, 1991; 59 FR 65235, Dec. 19, 1994; 61 FR 1, Jan. 2, 1996; 62 FR 17044, 17045, Apr. 9, 1997; 62 FR 66814, Dec. 22, 1997; 65 FR 5409, Feb. 4, 2000; 66 FR 30635, June 7, 2001]

§ 1201.4 General definitions.

(a) *Judge*. Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an attorney-examiner, an administrative judge, an administrative law judge, the Board, or any member of the Board.

(b) *Pleading*. Written submission setting out claims, allegations, arguments, or evidence. Pleadings include briefs, motions, petitions, attachments, and responses.

(c) *Motion*. A request that a judge take a particular action.

(d) *Appropriate regional or field office*. The regional or field office of the Board that has jurisdiction over the area where the appellant's duty station was located when the agency took the action. Appeals of Office of Personnel Management reconsideration decisions concerning retirement benefits, and appeals of adverse suitability determinations under 5 CFR part 731, must be filed with the regional or field office that has jurisdiction over the area where the appellant lives. Appendix II of these regulations lists the geographic areas over which each of the Board's regional and field offices has jurisdiction. Appeals, however, may be transferred from one regional or field office to another.

(e) *Party*. A person, an agency, or an intervenor, who is participating in a Board proceeding. This term applies to the Office of Personnel Management and to the Office of Special Counsel when those organizations are participating in a Board proceeding.

(f) *Appeal*. A request for review of an agency action.

(g) *Petition for review*. A request for review of an initial decision of a judge.

(h) *Day*. Calendar day.

(i) *Service*. The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, by commercial or personal delivery, or by electronic mail,

provided the requirements of § 1201.5 of this part have been met.

(j) *Date of service*. The date on which documents are served on other parties.

(k) *Certificate of Service*. A document certifying that a party has served copies of pleadings on the other parties. If a pleading is served by electronic mail, the address portion of the electronic mail message serves as a certificate of service.

(l) *Date of filing*. A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. The date of filing by electronic mail is the date on which the electronic mail is sent.

(m) *Internet filing option*. The option that an appellant may exercise to commence an appeal proceeding before the Board by filing through the electronic application (e-Appeal) available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(n) *Electronic mail filing and service*. The process of filing certain pleadings with the Board and serving certain pleadings on other parties using electronic mail.

(o) *Electronic signature*. The term "electronic signature" means a method that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the electronic message.

[54 FR 53504, Dec. 29, 1989, as amended at 58 FR 36345, July 7, 1993; 59 FR 65235, Dec. 19, 1994; 68 FR 59860, Oct. 20, 2003]

§ 1201.5 Electronic mail and Internet filing procedures.

(a) *Scope*. This section sets forth the rules applicable to the filing and service of pleadings by electronic mail and the Board's Internet filing option for

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matters within the Board's original jurisdiction (as explained in §1201.2 of this subpart) and matters within the Board's appellate jurisdiction (as explained in §1201.3 of this subpart). The electronic submission of a pleading commencing an appeal proceeding before the Board in a matter identified in §1201.3 of this subpart must be filed using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>). Except for matters identified in paragraph (b) of this section, pleadings relating to the adjudication of a matter identified in either §1201.2 or §1201.3 of this subpart may be filed using electronic mail, provided the requirements of this section are satisfied.

(b) *Matters not covered.* Matters that may not be filed by electronic mail or the Internet filing option are:

(1) A request to hear a case as a class appeal and any opposition thereto (§1201.27 of this subpart),

(2) Service of subpoenas (§1201.83 of this subpart),

(3) The initial filing in a Special Counsel complaint seeking disciplinary action (§1201.122 of subpart D),

(4) The initial filing in a Special Counsel complaint seeking corrective action (§1201.128 of subpart D),

(5) The initial filing in a Special Counsel request for a stay (§1201.134 of subpart D),

(6) The initial filing in an agency action seeking to discipline an administrative law judge (§1201.137 of subpart D),

(7) The initial filing in a case involving a proposal to remove a career appointee from the Senior Executive Service (§1201.143 of subpart D), and

(8) Filings with the Special Panel (§1201.173 of subpart E).

(c) *Internet filing option.* The electronic filing of an appeal is only allowed by using the Board's Internet filing option (e-Appeal) available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>). The Internet filing option allows an appellant to contest various types of agency actions and decisions and to raise various types of defenses and claims. The Internet filing option also includes the option of designating a representative and provides for an electronic signature. Detailed instruc-

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tions explaining how to use the Board's Internet filing option are available at the Board's Web site.

(d) *Filing electronic mail pleadings with the Board.* With the exception of pleadings commencing an appeal before the Board and the exceptions noted in paragraphs (b)(1) through (b)(8) of this section, a party may make any filing regarding a matter covered by this section by electronic mail if the party has completed the authorization under paragraph (f) of this section. All electronic mail filings should be addressed to the appropriate regional or field office or to the Clerk of the Board for matters pending at Headquarters. Electronic mail addresses to be used when filing with the Board will be specified in acknowledgement orders.

(e) *Electronic mail service by the Board and parties.* The Board may serve upon any party a document regarding a matter covered by this section by electronic mail provided that the party being served has authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section. A party may serve upon any party a pleading or document regarding a matter covered by this section by electronic mail provided that both the sending and receiving parties have authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section.

(f) *Election to engage in electronic mail filing.* (1) A party may elect to engage in electronic mail filing during a Board proceeding by filing with the judge or Board, and serving upon the other parties, a written statement of such election that includes the electronic mail address at which the party agrees to receive service. An election to engage in electronic mail filing constitutes consent to accept electronic service of pleadings and Board issuances at the electronic mail address specified. Such an election may be filed by any means provided in paragraph (i) of §1201.4 of this part, including electronic mail.

(2) All electronic mail filings must be sent from the electronic mail address specified in the election.

(3) A pleading or Board issuance served electronically on a party who has made an election under this section

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is deemed received on the date of electronic submission.

(4) A party who elects to engage in electronic mail filing may file any pleading, or portion of a pleading as described in paragraph (k) of this section, by non-electronic means.

(5) A party may rescind an election to engage in electronic mail filing at any time by filing notice of the rescission with the judge or, if applicable, the Clerk and serving notice of the rescission on the other parties.

(g) *Board acknowledgement of electronic filing.* The Board will acknowledge receipt of a pleading filed by electronic mail by sending an electronic mail confirmation of receipt.

(h) *Failed electronic mail service.* If an attempt to serve a pleading or document upon the Board or a party by electronic mail is unsuccessful, the sending party must attempt to resolve the problem. If electronic service cannot be accomplished within a reasonable period, the sending party must serve a copy of the pleading by one of the other means authorized in, and as provided by, § 1201.26(b)(2) of subpart B.

(i) *Requirements relating to electronic mail.* Parties should include the title of the pleading, the Board docket number, and the case title, *e.g.* Doe v. Agency, in the subject heading of any electronic mail served upon the Board or another party. Pleadings up to two paragraphs in length may be included in the body of an electronic mail. Pleadings exceeding two paragraphs in length must be served as an attachment, or attachments, to an electronic mail.

(j) *Attachments to electronic mail pleadings.* (1) Electronic mail attachments may be in any widely-used electronic format.

(2) If a recipient is unable to view, open, or print an electronic mail attachment sent with a pleading, the recipient shall be responsible for informing the sender of the problem as soon as practicable and identifying all attachments that could not be viewed, opened, or printed. In response to such a report, the sending party shall attempt to resolve the problem as soon as practicable. In the event that problems relating to the transmission of the document cannot be resolved, the sending party shall have three calendar

days to send a paper copy of all identified attachments to the complaining party.

(3) Electronic mail documents and all attachments must be formatted so that they will print on standard 8½ inch by 11 inch paper.

(4) Documents that can only be converted to electronic format by scanning may not be filed electronically if the length of the paper document exceeds 25 pages.

(k) *Hybrid pleadings containing both electronic files and paper documents.* A party who has elected electronic mail filing under this section may file a hybrid pleading in which part of the pleading is submitted electronically, and part of the pleading consists of one or more paper documents filed by non-electronic means. When a hybrid pleading is submitted, the electronic mail submission shall inform the Board and the other party of the portions of the pleading being submitted by non-electronic means. A hybrid pleading is deemed filed and served when all parts of the pleading have been filed and served.

(l) *Certificates of Service for e-mail pleadings filed or served by electronic mail.* If a pleading is served by electronic mail, the address portion of the electronic-mail message shall serve as the certificate of service.

(m) *Use of electronic filing and service subject to control by the Judge and the Clerk of the Board.* In the event that the Board or the parties encounter repeated or unexplained difficulties filing, serving, or receiving electronic mail pleadings, documents, or attachments, the judge or the Clerk of the Board may order a party to cease filing and serving pleadings by electronic mail and may cease the Board's use of electronic mail to serve documents. In such instances, filing and service shall be undertaken in accordance with § 1201.26 of subpart B. The authority to order the cessation of the use of electronic mail may be for a particular submission, a particular time frame, or for the duration of the pendency of a case.

(n) *Requirements relating to documents requiring a signature.* An electronic document filed by a party who has elected

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to engage in electronic mail filing pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this title that requires a signature. An electronically filed document shall constitute a declaration made under penalty of perjury if it contains the statement required by 28 U.S.C. 1746, as set forth in Appendix IV of this part.

(o) *Authority of a judge or the Clerk of the Board to require signed submissions.* A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by regular mail, by facsimile, or by commercial or personal delivery a signed non-electronic copy of the document.

[68 FR 59860, Oct. 20, 2003]

Subpart B—Procedures for Appellate Cases

GENERAL

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case, with due regard to the rights of all parties.

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

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§ 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

APPEAL OF AGENCY ACTION; PLEADINGS

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the appeal form in appendix I of this part; and

(d) Notice of any right the employee has to file a grievance, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(3) Whether there is any right to request Board review of a final decision